

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-10692-2020 (O&M)

Date of decision:07.08.2020

Jasvir Singh & others

... Petitioners

Vs.

The Superintending Canal Officer & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Sandeep Khunger, Advocate for the petitioners.

Mr. Ayush Sarna, AAG, Punjab.

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TEJINDER SINGH DHINDSA, J.(ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Challenge in the instant petition is to the order dated 03.10.2019 (Annexure P-13) passed by the Divisional Canal Officer, Bathinda Canal Division, Bathinda, whereby he has ordered for the splitting of outlet No.200/TR Multania Minor and has further ordered for setting up of a new outlet at 442000/L Bathinda branch and the area of the petitioners herein to be transferred to such new outlet. Further challenge is to the order dated 02.03.2020 (Annexure P-16) passed by the Superintending Canal Officer dismissing the appeal preferred by the petitioners and thereby affirming the order passed by the Divisional Canal Officer.

Having heard counsel for the petitioners at length and having perused the impugned orders, this Court is of the considered view that the validity of the order dated 03.10.2019 (Annexure P-13) need not be gone into at this stage. Such view is being taken as the facts make out a clear case of remand back to the Superintending Canal Officer. Under such circumstances, this Court is dispensing with issuing notice to the private respondents No.4 to 21. Learned State counsel has been heard as an advance copy of the petition has already been furnished and Mr. Ayush Sarna, learned AAG, Punjab represents respondents No.1 to 3 i.e. the official respondents.

Suffice it to notice that against the order dated 03.10.2019 (Annexure P-13) passed by the Divisional Canal Officer, petitioners availed of their remedy of appeal under Section 30-B (3) of the Northern India Canal and Drainage Act, 1873.

Perusal of the order passed by the Appellate Authority would show that the following grounds and submissions advanced on behalf of the appellants were noticed by the Appellate Authority:

“Shri Krishan Kumar Sharma, counsel for the appellant presented written arguments in the Court in which it has been stated that information under the R.T.I. Act, 2005 was sought by him from the Divisional Canal Officer, Bathinda Canal Division, Bathinda to the effect that whether approval from the Divisional Forest Officer, Bathinda was obtained before sanctioning Outlet at Burji No. 442000/L. In reply to this, the Divisional Canal Officer, Bathinda Canal Division, Bathinda, informed that no FCA Record was obtained by their Division whereas according to Punjab

Government Notification issued vide No. 1122-F.T/58/1198, the management of the canal land is with the Forest Department and no work can be undertaken without the prior approval of the Forest Department and no work can be undertaken without the prior approval of the Forest Department. In this case, he has also produced in this court the Photographs of R.D 442000-L, Bathinda Branch in which standing trees are seen at R.D 442000. As and when any Scheme is prepared by the Divisional Canal Officer, Bathinda Canal Division, Bathinda, then a draft scheme under Section 30-A of Canal Act, 1873 is issued by him and the expenses incurred on the Scheme is informed to the shareholders under Section 30-A(2) but in this case expenses of Rs. 20,000/- on the scheme have been shown whereas the price of 42 trees standing at the place through which the watercourse has to be passed, was required to be shown and according to the instructions of the National Green Tribunal, double trees are to be planted at the said place and the price of the same should have been included in the scheme. He has stated in the statement that due to these reasons he has impleaded District Forest Officer, Bathinda and National Green Tribunal as respondents so that at the time of publishing the scheme legally and sanctioning of the new outlet, their plea should have been heard.

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The appellant party pleaded before the court that the area of Village Multania, Mian and Teona is being irrigated through Outlet Burji 200-T.R Multania Minor. Some of the shareholders of this Outlet want to get their area transferred to Outlet Burji 442000-L of Bathinda Branch but the area under transfer falls at the beginning of Outlet Burji No.200-T.R. Multania Minor which is about 3-1/2 Kilometer away from this Outlet. They further informed the court that an application was filed by the respondent party in the court of Divisional Canal Officer, Bathinda Canal Division, Bathinda for the installation

of a new outlet for 400 acres area because the watercourse coming from the Minor for irrigation of their area had broken but in the statements added with the file, the respondent party by changing their statements have said that their fields are far away from the Minor Head and due to the long length of the watercourses, the Nakkas remain kept leaking. From this it is quite clear that the respondent party has put their demand in a wrong way as the watercourses are neither in broken condition nor the area of the respondent party falls far away from the Head Mogha. Counsel for the appellant party further pleaded that in the file no Officer has made report to the effect that the watercourses of 200-TR Multania Minor are in broken condition or there is leakage from the Nakkas. In case the watercourses are in broken condition or there is leakage, then the same are required to be repaired and the shareholders should not be put to loss by installing a new outlet. He further told the Court that the Divisional Canal Officer, Bathinda Canal Division, has issued notice under Section 30-B(2) of the Canal & Drainage Act, 1873 to publish the Scheme whereas no copy of the site plan prepared according to the Scheme was supplied to the Numberdar of any Village, the Halqa Zildar or Halqa Patwari nor any copy of the site plan was displayed in the office of the Divisional Canal Officer, Bathinda Canal Division, Bathinda. From this it is quiet clear that the scheme has not been published according to law. They prayed before the court that in order to verify this fact, copy of the site plan if supplied to Numberdar of the Village by the Officials of the Department, then the same be summoned from him at the time of hearing so that the fact of publishing the same could be known. He further stated that in the notice of the Scheme, the expenses on the dismantling of the outlets have been written by the Department as Rs. 20,000/- which has been wrongly mentioned because at the place where Outlet Burji 442000-L is to be installed, the trees are to be uprooted from 130 ft. Khatan

and these expenses should have been mentioned in the notice at the time of publication of the Scheme. In addition to this, according to the instructions of the National Green Tribunal, two new trees are to be planted at the place from where one tree is to be uprooted. It was prayed by him before the Court that the decision dated 3.10.2019 rendered by the Divisional Canal Officer be set aside and their appeal be accepted.”

The Appellate Authority in the impugned order dated 02.03.2020 (Annexure P-16) while dismissing the appeal has furnished the following reasoning:

“After perusing the documents brought on the revenue file and the appeal filed by the appellant in this Court, this court has found that the decision rendered by the Divisional Canal Officer, Bathinda Canal Division, Bathinda keeping in view the long length of the watercourses and their bad condition according to the existing situation of the field from Outlet Burji 200-TR Multania Minor and after seeing the reports made by the Zileदार and Sub Divisional Officer in the interest of better irrigation, is correct because when this scheme shall be sanctioned, the approval from the Forest Department shall be obtained by the shareholders themselves before the installation of the Outlet and the management of the watercourses has to be made by the shareholders themselves. Therefore the appeal of the appellant is dismissed and the decision dated 03.10.2019 rendered by the Divisional Canal Officer, Bathinda Canal Division dated 3.10.2019 in the interest of better irrigation, is upheld. This decision is rendered under Section 30-B(3) of the Canal & Drainage Act 8 of 1873.”

This Court finds sufficient merit in the contention raised by counsel for the petitioners that the Appellate Authority has only noticed the contentions/grounds raised by the appellants (petitioners herein) but the same have not been dealt with.

This Court would have no hesitation in observing that the order passed by the Appellate Authority dated 02.03.2020 (Annexure P-16) is a cryptic non-speaking order.

Even learned State counsel is at pains to justify the order passed by the Superintending Canal Officer at Annexure P-16 as the same sans reasoning.

The question as regards reasons to be assigned by the Appellate Authority even while affirming an order passed by the subordinate authority came up for consideration before the Apex Court in **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney & others, 2009 (5) SLR 512** and it was observed as under:-

*“8. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind. 9. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of **S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594**, is that people must have confidence in the judicial or quasi-judicial authorities.*

10. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

*No doubt, in **S.N. Mukherjee's case (supra)**, it has been observed (vide para 36) that:*

"..The appellate or revisional authority, if it affirms

such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

11. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority."

The impugned order dated 02.03.2020 (Annexure P-16) passed by the Superintending Canal Officer even though noticed the submissions/ grounds raised on behalf of the appellants/petitioners herein but the same have not been dealt with at all. The impugned order passed by the Appellate Authority as such cannot sustain.

For the reasons recorded above, the present writ petition is partly allowed and the order dated 02.03.2020 (Annexure P-16) passed by the Superintending Canal Officer is set aside. Matter is remanded back for consideration afresh at the hands of the Appellate Authority and after taking into account all the submissions and contentions raised in the appeal. Let a final order upon reconsideration be passed within a period of 2 months from the date of receipt of a certified copy of this order and after affording an opportunity of hearing to all the stake holders including the private respondents herein.

It is further directed that till the date of passing of the order afresh at the hands of the Appellate Authority as has been directed, the

order dated 03.10.2019 (Annexure P-13) passed by the Divisional Canal officer shall not be given effect to.

Writ petition is disposed of in the aforesaid terms.

It is, however, clarified that this Court has not examined the issue on merits.

07.08.2020

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| (i) | Whether speaking/reasoned? | Yes/No |
| (ii) | Whether reportable? | Yes/No |